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**IN THE  
COURT OF APPEALS OF INDIANA**

ROBERT BRAVO,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 03A04-0607-CR-382

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT  
The Honorable Roderick McGillivray, Judge  
Cause No. 03D02-0506-FD-735

**February 28, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Robert Bravo appeals the sentence he received after pleading guilty to operating a vehicle while intoxicated as a Class D felony. He argues the trial court should have considered as mitigating circumstances that he would respond favorably to probation or short-term imprisonment, and that he pled guilty. The trial court did consider whether Bravo would respond favorably to probation or short-term imprisonment when it found he was in need of correctional rehabilitative treatment best provided by commitment to a penal facility. As Bravo received a benefit from his guilty plea and the evidence against him was strong, the trial court was not obliged to consider the plea a significant mitigating circumstance. We accordingly affirm.

### **FACTS AND PROCEDURAL HISTORY**

On June 6, 2005, Bravo was charged with operating a vehicle while intoxicated as a Class A misdemeanor,<sup>1</sup> operating a vehicle while intoxicated as a Class D felony,<sup>2</sup> operating a vehicle with a blood alcohol concentration (BAC) of .08 or more as a Class C misdemeanor,<sup>3</sup> and operating a vehicle with a BAC of .08 or more as a Class D felony.<sup>4</sup> On May 5, 2006, Bravo pled guilty to operating a vehicle while intoxicated as a Class D felony. The trial court sentenced him to three years, with one year suspended.

### **DISCUSSION AND DECISION**

The trial court was within its discretion to the extent it declined to consider as mitigating factors that Bravo was likely to respond affirmatively to probation or short-

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<sup>1</sup> Ind. Code § 9-30-5-2(A).

<sup>2</sup> Ind. Code § 9-30-5-2(A).

<sup>3</sup> Ind. Code § 9-30-5-1(A).

<sup>4</sup> Ind. Code § 9-30-5-1(A).

term imprisonment, and that Bravo had pled guilty. Generally, the weight assigned to a mitigator is at the trial judge's discretion, and the judge is under no obligation to assign the same weight to a mitigating circumstance as does the defendant. *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993). We set aside a weighing of aggravators and mitigators only if there is an abuse of discretion. *Covington v. State*, 842 N.E.2d 345, 348 (Ind. 2006).

During sentencing, the trial court stated:

You may be a habitual traffic violator but that doesn't prevent you from getting into a car, it doesn't prevent you from driving. The fact of the matter is considering your character, your prior criminal record and your condition, I believe that this is a crime that is very likely to happen again . . . I see six prior DUI's. This is your sixth that you've admitted to. Having considered all of the factors in 35-38-1-7.1, having found that there are considerable aggravating circumstances including the defendant's criminal history, I believe that the defendant is in need of correctional rehabilitative treatment that is best provided by commitment to a penal facility. I do not find any mitigating factors.

(Tr. at 24-25.)

The trial court clearly discounted evidence Bravo might respond favorably to probation or short-term imprisonment when it found he was in need of correctional rehabilitative treatment best provided by commitment to a penal facility. A trial judge may use mitigating factors to determine an ultimate sentence, but mitigating factors are not a mandatory consideration in sentencing a criminal defendant. *Wagner v. State*, 474 N.E.2d 476, 496 (Ind. 1985). A trial court therefore may find it proper to afford no weight to a mitigating factor, and that is exactly what the trial court did in this instance.

As to the mitigating effect of Bravo's guilty plea, we note the plea came eleven months after Bravo was charged and only forty-three days before he was scheduled to go to trial. In exchange, the State agreed to drop three other charges against him. A defendant who pleads guilty may deserve to have some mitigating weight extended to the guilty plea in return. *Widener v. State*, 659 N.E.2d 529, 534 (Ind. 1995). However, not every guilty plea is sufficient to mitigate a sentence. *Sensback v. State*, 720 N.E.2d 1160, 1164 (Ind. 1999). "[A] guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one." *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied* 855 N.E.2d 995 (Ind. 2006).

Bravo received a benefit for his plea of guilty, and his decision was "pragmatic" in light of the overwhelming evidence against him. The trial court acted within its discretion when it found Bravo's guilty plea was not a mitigating circumstance.

Affirmed.

NAJAM, J., and MATHIAS, J., concur.